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IN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 443

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

EFROIM SPECTOR

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED NOVEMBER 23, 1951

PROBABLE JURISDICTION NOTED JANUARY 2, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 443

THE UNITED STATES OF AMERICA, APPELLANT,

VS.

EFROIM SPECTOR

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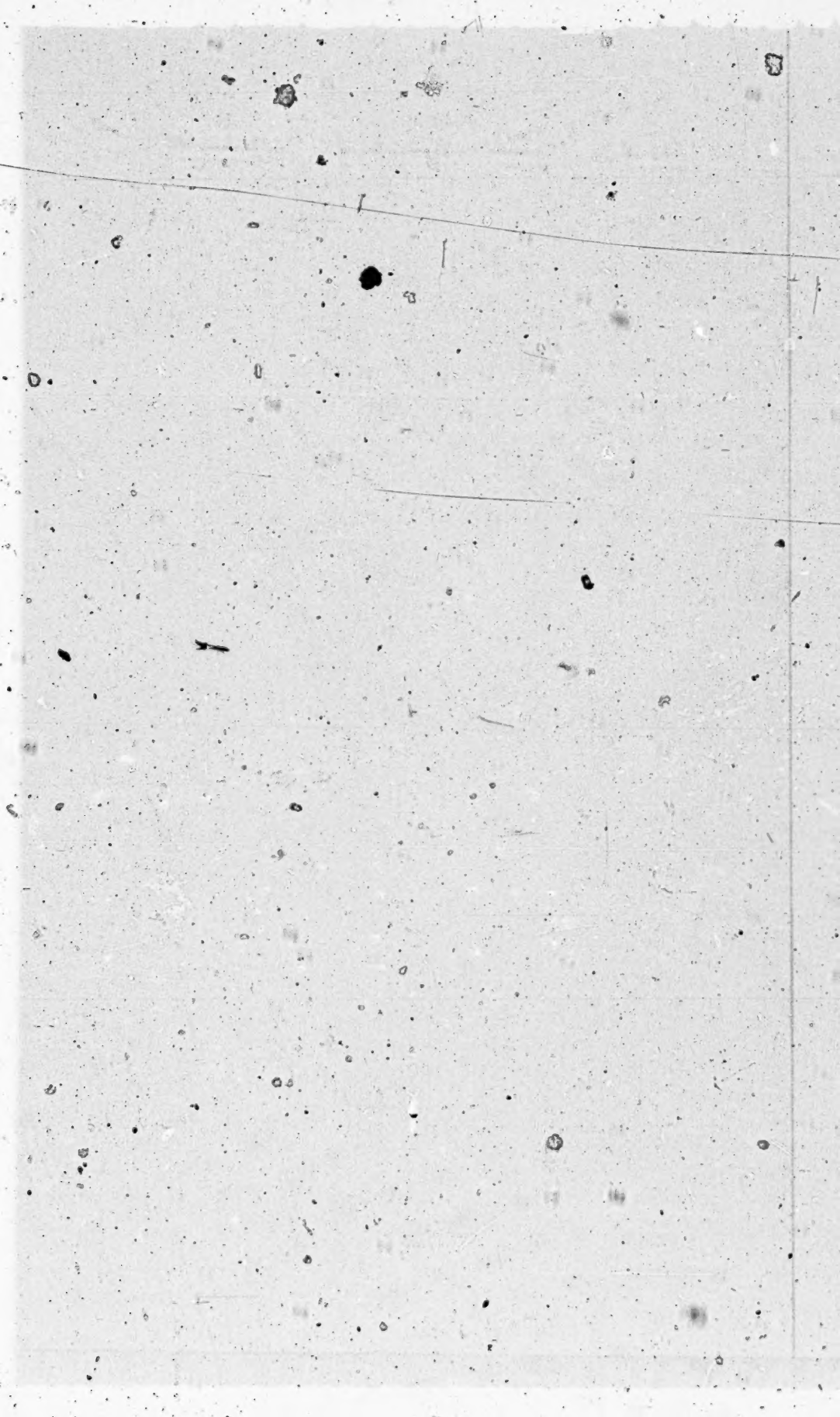

1-2 In the United States District Court in and for the Southern District of California, Central Division

February, 1951, Grand Jury

No. 21844 CD

UNITED STATES OF AMERICA, PLAINTIFF

v.

EFROIM SPECTOR, DEFENDANT

INDICTMENT—Filed July 3, 1951

[U.S.C., Title 8, Sec. 156(c)—Failure to depart United States after order of deportation]

The grand jury charges:

COUNT ONE

[U.S.C., Title 8, Sec. 156(c)]

(1) Defendant EFROIM SPECTOR is an alien who entered the Port of New York, New York, on or about August 13, 1913, from Russia, and against whom an Order of Deportation is outstanding under the provisions of United States Code, Title 8, Section 137, said order having been entered on or about August 13, 1930, by reason of his having been found in the United States in violation of said act of Congress in that the defendant believes in, advises, advocates, and teaches the overthrow by force or violence of the Government of the United States; is a member of an organization, association, society, and group that believes in, advises, advocates, and teaches the overthrow by force or violence of the Government of the United States; and is a member of an organization, association, society, and group that writes, circulates, distributes, prints, publishes, and displays written and printed matter advising, advocating, and teaching the overthrow by force or violence of the Government of the United States, and, pursuant to said Order of Deportation, was required to depart from the United States during the period of six months from September 23, 1950; and

3 (2) During the period of six months from September 23, 1950, the defendant did wilfully fail to depart from the United States and during said period and thereafter remained in Los Angeles County, California, within the Central Division of the Southern District of California.

4

COUNT TWO

[U.S.C., Title 8, Sec. 156(c)]

The grand jury realleges all of the allegations of the first count of this indictment except those contained in paragraph (2) thereof; and alleges:

During the period of six months from September 23, 1950, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant EFROIM SPECTOR did wilfully fail to make timely application in good faith for travel or other documents necessary to his departure from the United States.

5

COUNT THREE

[U.S.C., Title 8, Sec. 156(c)]

The grand jury realleges all of the allegations of the first count of this indictment except those contained in paragraph (2) thereof and alleges:

During the period of six months from September 23, 1950, defendant EFROIM SPECTOR did wilfully refuse to depart from the United States and during said period and thereafter remained in Los Angeles County, California, within the Central Division of the Southern District of California.

6

COUNT FOUR

[U.S.C., Title 8, Sec. 156(c)]

The grand jury realleges all of the allegations of the first count of this indictment except those contained in paragraph (2) thereof and alleges:

During the period of six months from September 23, 1950, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant EFROIM SPECTOR did wilfully refuse to make timely application in good faith for travel or other documents necessary to his departure from the United States.

A True Bill.

ROBERT B. YOUNG III,
Foreman.

ERNEST A. TOLIN,
United States Attorney.

[File endorsement omitted.]

7 In United States District Court

No. 21844 CD

[Title omitted]

NOTICE OF MOTION TO DISMISS INDICTMENT—Filed July 18, 1951

To the United States of America, Plaintiff, and to Ernest A. Tolin, United States Attorney, its attorney:

You will please take notice that the defendant herein will, on July 19, 1951, at 1:30 o'clock P.M., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable William Mathes, Judge of the above entitled court, in the Federal Building, at Los Angeles, California, bring on for hearing by said court, pursuant to order, his motion to dismiss the indictment herein, filed herewith.

MARGOLIS AND MCTERNAN,
By BEN MARGOLIS,
Attorneys for Defendant.

[File endorsement omitted.]

8 [File endorsement omitted]

In United States District Court

[Title omitted]

MOTION TO DISMISS INDICTMENT—Filed July 18, 1951

The defendant moves that the indictment herein be dismissed upon the following grounds:

I

The indictment and each count thereof fail to state facts sufficient to constitute an offense against the United States.

II

The indictment seeks to deny to defendant the right granted him under law to take any proper steps for the purpose of securing cancellation of or exemption from the order of deportation of defendant, and the indictment is void as contrary to law and to declared public policy.

III

Section 20(c) of the Immigration Act of February 5, 1917, as amended (8 U.S.C., 156), the statute under which the indictment is

drawn, is unconstitutional and void on its face and as applied
9 to the defendant in the following respects:

(a) That in imposing said requirements upon plaintiff more than twenty years subsequent to the issuance and service of said warrant of deportation dated August 13, 1930, said Act is an ex post facto law repugnant to Article I, Section 9, cl. 3 of the Constitution of the United States.

(b) That in requiring plaintiff to effect his own deportation under said warrant of deportation dated August 13, 1930 on pain of conviction of a felony and imprisonment for up to ten years for willful failure or refusal, said Act constitutes and imposes cruel and unusual punishment upon plaintiff in violation of the Eighth Amendment to the Constitution of the United States.

(c) That in compelling plaintiff to effect and execute said warrant of deportation against himself, said Act denies to plaintiff due process of law in violation of the Fifth Amendment to the Constitution of the United States.

IV

Counts One and Three of the indictment state the same purported offense and the indictment thereby purports to charge the defendant twice for the same offense.

V

Counts Two and Four of the indictment state the same purported offense and the indictment thereby purports to charge the defendant twice for the same offense.

VI

The indictment in Count One thereof is uncertain in that it cannot be determined therefrom:

(a) By what act or acts it is claimed that defendant willfully failed to depart from the United States as alleged.

(b) When and on what date or dates it is claimed that such act or acts occurred.

(c) Where it is claimed that such act or acts occurred.

10 (d) In what respects it is claimed that such refusal was willful.

VII

The indictment in Count Three thereof is uncertain in that it cannot be determined therefrom:

(a) By what act or acts it is claimed that defendant willfully refused to depart from the United States as alleged.

(b) When and on what date or dates it is claimed that such act or acts occurred.

(c) Where it is claimed that such act or acts occurred.

(d) In what respects it is claimed that such refusal was willful.

VIII

The indictment in Count Two thereof is uncertain in that it cannot be determined therefrom:

(a) By what act or acts it is claimed that defendant willfully failed to make timely application in good faith for travel or other documents necessary to his departure from the United States as alleged.

(b) When and on what date or dates it is claimed that such act or acts occurred.

(c) Where it is claimed that such act or acts occurred.

(d) In what respects it is claimed that such refusal was willful.

IX

The indictment in Count Four thereof is uncertain in that it cannot be determined therefrom:

(a) By what act or acts it is claimed that defendant willfully refused to make timely application in good faith for travel or other documents necessary to his departure from the United States as alleged.

11

X

The indictment is uncertain in that it fails to allege:

(a) The country of origin of the defendant.

(b) The country to which the defendant was ordered deported as alleged.

(c) Whether such country or either of them is willing to receive the defendant upon expulsion from the United States.

(d) Whether such country or either of them has issued or will issue travel documents to effectuate defendant's departure from the United States.

(e) Whether application by defendant to such country for travel or other documents would have resulted in the issuance of the same.

XI

The indictment fails to allege that the defendant is deportable to any country whatever and further fails to allege that the defendant could gain admittance to any country.

Said motion is based upon the attached affidavit of the defendant, Frank Efroim Spector, the attached memorandum of points and authorities and all of the other records and files herein.

MARGOLIS AND MCTERNAN,
By BEN MARGOLIS,
Attorneys for Defendant.

12 [File endorsement omitted]

AFFIDAVIT OF EFROIM SPECTOR IN SUPPORT OF MOTION TO DISMISS INDICTMENT—Filed July 18, 1951

STATE OF CALIFORNIA,
County of Los Angeles, ss:

EFROIM SPECTOR, also known as Frank Spector, being first duly sworn, deposes and says:

That he is the defendant in the above entitled proceeding.

That he has been a resident of the United States continuously since 1913 and of the State of California continuously except for limited absences since 1920; that he is married, is the father of a native-born daughter and that his daughter is the mother of children born in the United States.

That sometime in 1928 on a date which he does not now recall, affiant was served with a warrant of arrest for deportation issued or caused to be issued by the Secretary of Labor; that pursuant to such warrant of arrest, hearings to determine affiant's deportability were conducted under the authority of the Secretary of Labor in November, 1928 and in April and July 1930; that following
13 the conclusion of such hearings an order directing affiant's deportation to the Union of Soviet Socialist Republics was issued by or under the authority of the Secretary of Labor on August 13, 1930.

That deportation under said order of August 13, 1930, has never been effectuated or carried out; that affiant is informed and believes and on the basis of such information and belief states that no proceedings looking toward the execution of said deportation order were conducted or attempted by the Department of Labor or, following the transfer of the Immigration and Naturalization Service to the Department of Justice, by the Attorney General, between August 13, 1930 and on or about December 1, 1940. That at all times from August 13, 1930 until March 8, 1950 affiant was at liberty upon his own recognizance. That on or about March 8, 1950 affiant was required by the District Director of the Immigration and Naturalization Service at Los Angeles, California, to post bond in the sum of $5,000.00 to secure his future appearance at any proceedings under said deportation order, and that bond in such amount was then and

there posted in affiant's behalf and at all times since said date has been and now is in full force and effect.

That the only proceedings of any kind in connection with affiant's status of which affiant has knowledge since the issuance of said deportation order of August 13, 1930, have consisted of efforts by affiant during World War II to obtain United States citizenship by naturalization; that in connection therewith affiant in or about the year 1945 filed with the Board of Immigration Appeals of the Department of Justice a motion to vacate the said deportation order and said motion on July 23, 1945 was denied by said Board. That in 1942 affiant made repeated efforts to enlist in the armed forces of the United States and was in each instance rejected for military service solely, as affiant is informed and believes, on account of his age.

14 That on or about January 17, 1951 affiant by counsel moved the Board of Immigration Appeals of the Department of Justice for an order vacating the deportation order of August 13, 1930 and dismissing the deportation proceedings against him upon the ground that the same were and are *functus officio* and without force or effect; affiant also requested opportunity for oral argument upon said motion before the said Board. That on February 8, 1951 affiant by counsel was notified in writing that such motion, together with his request for oral argument thereof, had been denied by the said Board of Immigration Appeals.

That on February 26, 1951 and on March 8, 1951 affiant by counsel addressed letters to the Commissioner of Immigration and Naturalization at the offices of the Commissioner in Washington, D. C., requesting information as to what other steps, if any, might be taken by affiant within the Immigration and Naturalization Service or the Department of Justice to challenge and determine the validity of said deportation order of August 13, 1930; that neither of said letters has ever been acknowledged by the Commissioner or anyone on his behalf.

That in the absence of information or advice from the Commissioner of Immigration and Naturalization as to such action as he might take for the purpose of securing cancellation of said deportation order of August 3, 1930, affiant on or about March 22, 1951 filed in this court a civil action for a declaration as to the validity of said deportation order and for an injunction restraining the District Director of Immigration and Naturalization at Los Angeles, California, pending such declaratory judgment, from proceeding to enforce said order against affiant. That said action is entitled Frank Spector, plaintiff, vs. H. R. Landon, District Director, Los Angeles District, Immigration & Naturalization Service, Defendant, and is numbered 12961-HW in this Court. That said

action at all times since on or about March 22, 1951 has been
15 and now is on file and pending in this Court and that pursuant to stipulation the defendant therein has until July 13, 1951 to appear, answer, or otherwise plead to said complaint.

That affiant came to the United States to make his home in 1913. That affiant has lived in the United States throughout his young manhood and his adult life and knows and remembers no other home. That affiant at all times since coming to the United States has considered this country as his own and has never owed nor offered allegiance to any other nation. That in attempting to procure an order vacating the said deportation order of August 13, 1930 and in filing the said civil action in this court, affiant intended and intends in good faith to secure cancellation of said order of deportation so that affiant may remain in the United States and live out his life here.

EFROIM SPECTOR also known as Frank Spector.

Subscribed and sworn to before me this 17th day of July, 1951.

[SEAL.] MARY L. ROSENFIELD,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Jan. 15, 1955.

16 [File endorsement omitted]

In United States District Court

[Title omitted]

MEMORANDUM OF DECISION—Filed September 12, 1951

Defendant stands indicted for alleged violations of those provisions of § 23 of the Internal Security Act of 1950 [64 Stat. —, 8 U.S.C. § 156(c)] which declare that:

"Any alien against whom an order of deportation is outstanding . . . who shall willfully fail or refuse to depart from the United States within a period of six months from the date of such order of deportation, or from September 23, 1950, whichever is the later, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure . . . shall upon conviction
17 be guilty of a felony, and shall be imprisoned not more than ten years. . . ."

The indictment contains four counts averring that defendant is an alien against whom an order of deportation entered August 13,

1930 is outstanding, and that "during the period of six months from September 23, 1950," defendant did willfully "fail to depart from the United States" [Count 1]; "fail to make timely application in good faith for travel or other documents necessary to his departure from the United States" [Count 2]; "refused to depart from the United States" [Count 3]; and "refused to make timely application in good faith for travel or other documents necessary to his departure from the United States" [Count 4].

Defendant moves to dismiss the indictment. In support of the motion he urges the above-quoted provisions of § 23 of the Act must be held unconstitutional [see *Yick Wo* v. *Hopkins*, 118 U.S. 356, 369 (1886); *Wong Wing* v. *United States*, 163 U.S. 228, 238 (1896)] upon the grounds inter alia that the statute denies the defendant due process of law [U. S. Const. Amend. V], is an ex post facto law [U. S. Const. Art. I, § 9], and imposes cruel and unusual punishment [U. S. Const. Amend. VIII].

18 In "The Chinese Exclusion Case" [*Chae Chan Ping* v. *United States*, 130 U.S. 581, 606-607; 609 (1889)], the Supreme Court said: "The power of the government to exclude foreigners from the country whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances, and never denied . . . the power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States. . . ."

Later in *Fong Yue Ting* v. *United States*, 149 U.S. 698, 707 (1893), the Court declared that:

> "The right of a nation to expel or deport foreigners . . . rests upon the same grounds and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country."

The statute at bar was enacted in exercise of this inherent right of sovereignty. The Congress in effect has ordered all aliens against whom an order of deportation is outstanding to depart from this country within a specified period, and provided for the punishment of any who willfully fail or refuse "to depart" or "to make timely application . . . for travel or other documents necessary to . . . departure." [8 U.S.C. §156(c).]

Defendant asserts that this congressional enactment "is so vague and indefinite that it fails to give due notice of what it punishes" and hence falls within the constitutional prohibition of the
19 Fifth Amendment that "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

The due process clause of the Fifth Amendment requires that "criminal statutes . . . give due notice that an act has been made criminal before it is done . . ." [*Jordan* v. *DeGeorge*, 341 U.S.

223, 230 (1951)] because "Every man should be able to know with certainty when he is committing a crime" [*United States* v. *Reese*, 92 U.S. 214, 220 (1875)]. Hence "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." [*Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926).]

If challenged as repugnant to the due process clause of the Fifth Amendment, a statute must be tested "on its face"; for it is "the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression." [*Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939); *United States* v. *Petrillo*, 332 U.S. 1, 6-7 (1947); cf. *Dennis* v. *United States*, 341 U.S. 494, 515 (1951) (opinion of Vinson, C.J.).]

20 First challenged by defendant are those provisions of § 23 of the Internal Security Act of 1950 [64 Stat. —, 8 U.S.C. § 156(c)] which declare guilty of a felony "any alien against whom an order of deportation is outstanding, . . . who shall willfully fail or refuse to depart from the United States within a period of six months from . . . September 23, 1950."

I find in this language no uncertainty "which deprives a person of the ability to predetermine whether a contemplated action (omission) is criminal under the provisions of this law." [*Gorin* v. *United States*, 312 U.S. 19, 27 (1941); *id.* at 27, n. 13.] The act commanded to be done, the identity of the group subject to the command, and the time limit for performance, all are clear and specific. That part of the statute which serves as the basis for the first and third counts of the indictment must therefore be held to meet fully the constitutional requirement of certainty within the "due process" clause of the Fifth Amendment.

Next to be considered are the provisions of § 23 declaring guilty of a felony "any alien against whom an order of deportation is outstanding . . . who shall willfully fail or refuse . . . to make timely application in good faith for travel or other documents necessary to his departure. . . ." This portion of the statute is involved in the second and fourth counts of the

21 indictment.

Assuming that "timely application" means an application made early enough to enable the alien "to depart from the United States within a period of six months from the date of . . . order of deportation, or from September 23, 1950, whichever is later" [see 8 U.S.C. § 156(c)], the questions remain (1) for what and (2) to whom shall the application be made.

The statute merely provides that timely application be made "for travel or other documents necessary to his departure." Would "timely" purchase of a Sunday bus ticket to Tijuana across

the Mexican border suffice? Or would it be necessary to obtain more formal "travel or other documents necessary to . . . departure" in order to avoid criminality?

If it be assumed the "travel or other documents" referred to must mean passports, visas, permits or the like, there still remains the question whether the statute commands the alien to make "timely application" therefor to only one foreign country, or to all foreign countries maintaining consulates in the city, county and state of the alien's residence, or to all embassies and consulates in the nation's capital. [See *United States* v. *Evans*, 333 U.S. 483, 486-488, 495 (1948).]

22 Elaboration seems surplusage. This part of § 23 commands the alien "to determine his conduct not . . . by reference to knowable criteria, but by . . . conjecture. . . ." [*Collins* v. *Kentucky*, 234 U.S. 634, 638 (1914).]

Where a criminal statute forbids affirmative action, one in doubt as to precisely what is forbidden can escape a charge of criminality by avoiding all conduct closely resembling the uncertain acts so forbidden. [See *United States* v. *Petrillo*, *supra*, 332 U.S. at 5-8; *United States* v. *Alford*, 274 U.S. 264, 267 (1927); *Omaechevarria* v. *Idaho*, 246 U.S. 343, 348 (1918).] But even that method of compliance is not available where the statute makes criminal an omission or failure to act. For a statute prohibiting an omission is in effect a law commanding action; and no one can foretell compliance unless the command be reasonably specific.

So if specificity be essential to due process, and hence to the constitutionality of criminal statutes forbidding affirmative action [see *United States* v. *Cohen Grocery Co.*, 255 U.S. 81, 89 (1921); *Stromberg* v. *California*, 283 U.S. 359, 369 (1931); *Herndon* v. *Lowry*, 301 U.S. 242, 261-264 (1937)], statutes making criminal an omission should a multo fortiori specifically declare what action is required for compliance, to the end that all may know precisely what affirmative conduct is required to avoid commission of
23 a crime. [See *Screws* v. *United States*, 325 U.S. 91 (1945).]

The government however points to the fact that § 23 specifies one must "willfully" fail or refuse to perform the acts commanded in order to commit the offense, and urges that despite any indefiniteness in language the provisions in question give due notice of conduct made criminal because "punishment is imposed only for a neglect of duty knowingly omitted with the purpose of omitting that which the statute requires." But again, although the element of wilfulness may compensate for some lack of specificity in a criminal statute forbidding affirmative acts [see *Williams* v. *United States*, 341 U.S. 97, 101 (1951); *Communications Ass'n* v. *Douds*, 339 U.S. 382, 413 (1950); *Screws* v. *United States*, *supra*, 325 U.S. at 101; *United States* v. *Ragen*, 314 U.S. 513, 524 (1942);

Omaechevarria v. *Idaho*, *supra*, 246 U.S. at 348], it can serve no such purpose where as here the statute condemns inaction and constitutes in effect a command to do some vague and indefinite act or series of acts.

Since all are entitled to be informed—indeed are presumed to know—what the law forbids and what the law commands [*Hamburg-American Line* v. *United States*, 291 U.S. 420, 426 (1934)], the law should not "lag behind common sense." [*Ludecke* v. *Watkins*, 335 U.S. 160, 166-167 (1948).] And common sense as well as our concept of due process of law dictate that standards of proscribed conduct be even more definite where the conduct forbidden is an omission. [See *Viereck* v. *United States*, 318 U.S. 236, 241-243, 245 (1943).]

The provisions of § 23 of the Internal Security Act of 1950 [64 Stat. —, 8 U.S.C. § 156(c)] upon which the second and fourth counts of the indictment are based must therefore be held to be too vague and uncertain to meet the essential requirements of due process of law within the Fifth Amendment.

Defendant's remaining contentions of unconstitutionality cannot be sustained. In view of the nation's inherent right to expel and deport aliens [*Fong Yue Ting* v. *United States*, *supra*, 149 U.S. at 707], punishing those against whom an order of deportation is outstanding who "willfully fail or refuse to depart" [8 U.S.C. § 156(c)] is clearly not a violation of due process. Nor is maximum punishment of ten years imprisonment for such an offense "cruel and unusual" within the meaning of the constitutional limitation. [U. S. Const. Amend. VIII; *Becker* v. *United States*, 91 F. 2d 550 (9th Cir. 1937); *United States* v. *Sorcey*, 151 F. 2d 899, 902-903 (7th Cir. 1945); *cert. denied* 327 U.S. 794 (1946); cf. *Weems* v. *United States*, 217 U.S. 349 (1910).] And since the conduct proscribed by the provision "willfully fail or refuse to depart" is only such as occurs more than six months after the date of the enactment of the statute [see 8 U.S.C. § 156(c)], it is not an "ex post facto Law." [U. S. Const. Art. I, § 9; *Garner* v. *Los Angeles Board*, 341 U.S. 716, 721 (1951).]

Defendant urges dismissal upon the further ground that the third and fourth counts of the indictment charge the same offenses as the first and second counts. It is permissible to charge a single offense in different ways and separate counts, but upon conviction punishment may be imposed only for a single offense. [See *Barnes* v. *United States*, 142 F. 2d 648, 650 (9th Cir 1944); *United States* v. *Bent*, 175 F. 2d 397, 400 (8th Cir. 1949); Fed. R. Cr. P. 8(a); 2 Wharton's Criminal Evidence § 1033 (11th ed. 1935); cf. *Catrino* v. *United States*, 176 F. 2d 884, 888 (9th Cir. 1949).]

For the reasons stated defendant's motion to dismiss should be and is hereby granted as to the second and fourth counts of the indictment and denied as to the first and third counts.

September 12, 1951.

WM. C. MATHES,
United States District Judge.

26 In United States District Court

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EFROIM SPECTOR, DEFENDANT

JUDGMENT OF DISMISSAL (As to Counts 2 and 4)—Filed October 15, 1951

The defendant having filed his motion to dismiss the indictment herein, and the court having prepared and filed on September 12, 1951, a memorandum of decision, and for the reasons therein stated;

It is hereby ordered and adjudged that the defendant's motion to dismiss be granted as to Counts 2 and 4 of the indictment, and denied as to Counts 1 and 3 of the indictment.

It is further ordered and adjudged that Counts 2 and 4 of the indictment herein be, and the same are, hereby dismissed.

It is further ordered that this judgment of dismissal be entered nunc pro tunc as of September 12, 1951.

Dated this 15th day of October, 1951.

WM. C. MATHES,
United States District Judge.

Presented by:
RAY H. KINNISON,
Assistant U. S. Attorney,
Chief of Criminal Division.

[File endorsement omitted.]

27-42 AFFIDAVIT OF SERVICE BY MAIL (omitted in printing).

43-46 STATEMENT PURSUANT TO RULE 12, PARAGRAPH 2 OF THE RULES OF THE SUPREME COURT (omitted in printing).

47 In United States District Court

[Title omitted]

SUPPLEMENTAL NOTICE OF APPEAL—Filed October 19, 1951

The United States hereby appeals to the Supreme Court of the United States from the order and judgment of the United States

District Court for the Southern District of California, entered September 12, 1951, dismissing counts 2 and 4 of the indictment against defendant, which charged him with violations of that portion of Section 20(c) of the Act of February 5, 1917, as amended by Section 23 of the Internal Security Act of 1950, which imposes criminal penalties against an alien who has been ordered deported and who willfully fails or refuses to make timely application in good faith for travel or other documents necessary to his departure.

Dated: October 19, 1951.

ERNEST A. TOLIN,
United States Attorney.
WALTER S. BINNS,
Chief Assistant U. S. Attorney.
RAY H. KINNISON,
Assistant U. S. Attorney,
Chief of Criminal Division.
ANGUS D. MCEACHEN,
Assistant U. S. Attorney

[File endorsement omitted.]

48-51 AFFIDAVIT OF SERVICE BY MAIL (omitted in printing).

52 In United States District Court

[Title omitted]

8—156(c)

FAILURE TO DEPART U. S. AFTER ORDER OF DEPORTATION

DOCKET ENTRIES

Date	*Proceedings*	*Clerk's Fee*
Jul. 3, 1951	Ent. Ord. for Flg. Indict. & Issuance B/W—Bond $15,000. Fld. Indict.—Issd B/W—MD JS-2.—Plaintiff, $15.00.	
7-6-51	Ent procs on & ent ord that bond in 21844-Crim. is suff. & upon giving it in manner & form as made on the stip htf fld, dft released from custody; issd abstr US Mar & fld recpt. (M)	
7-6-51	Fld Stip. for Cash Deposit, with approval of Judge McCormick thereon, & deposited $15,000 2½% US Treas. bonds. Issd abstr US Mar.	
7-9-51	Fld Design. of Counsel & Appear Prae Margolis & McTernan, by Ben Margolis, Atty for deft. Ent procs on ARR, T/N, a/k/a Frank Spector; ord fur procs be carried on in those names. Ent ord contg to 7-19-51 1:30PM for plea & to hear mots. deft	
53	desires to present. Mot. & authorities to be fld by 7-16-51 & U.S. author. to be fld by 7-18-51. (WM)	

7-18-51. Fld Mot. to Dism; Not. of Mot. retble 7-19-51 1:30 PM: affid. of dft Spector in Suppt. of Mot. to Dism.; Mot. for B/P and Not. of Mot. retble 7-19-51 1:30 PM, & Memo Pts. & Auths. in suppt. of Mot. to Dism. & for B/P.

7-19-51. Ent procs on hrg Mot to Dism. & ent ord contg to 7-24-51 1:30P.M. for fur hrg & to hear mot for B/P & for plea. (WM) Fld. B/W-Retn. Execu.

7-24-51. Ent procs on fur hrg on Mot. to Dismiss & mot for B/P; ent ord submitg on briefs to be fld 10x10x5; U.S. to file first brief. (WM)

8-2-51. Fld. Govt's. Brief.

8-14-51. Fld Dft's Reply Brief in Suppt. of Mot. to Dismiss Indict. (U.S. Attys served)

8-27-51. Fld Govt's. Reply Brief.

10-12-51. Fld Memo. of Decision by Judge Mathes grntg. Mot. to Dismiss Cts. 2 & 4, & denyg. as to Cts. 1 & 3. Notif. Attys & Amicus Curiae & mld copy to Atty. Gen.

10-12-51. Fld Govt's. Notice of Appeal to the Supreme Court from Ord. ent 9-12-51 dismissg. Cts. 2 & 4 of Indict. with affid. of Serv. by Mail thereon. Fld Stmt as to Juris; fld Notif. to deft of appeal; fld Design. of Record on Appeal, each with Affid. of Service by Mail thereon. Plaintiff, $5.00.

10-15-51. Fld Judgment of Dismissal as to Counts 2 & 4, nun pro tunc as of 9-12-1951. (WM)

10-19-51. Fld Govt's. Suppl. Notice of Appeal; Fld Suppl. Design. of Record on Appeal.

54 Clerk's Certificate to foregoing transcript omitted in printing.

55-56 In the Supreme Court of the United States, October Term, 1951

[Title omitted]

On Appeal from the United States District Court for the Southern District of California

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed December 20, 1951

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the portion of Section 20(c) of the Act of February 5, 1917, as amended by Section 23 of the Internal Security Act of 1950, 8 U.S.C. 156(c), which

provides criminal penalties against an alien, ordered deported for advocating the overthrow of the Government by force and violence, who shall "willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure," is unconstitutionally vague and indefinite.

2. The District Court erred in granting the motion to dismiss counts 2 and 4 of the indictment.

Appellant deems the entire record as filed in the above-entitled case, with the exception of the first notice of appeal and designation of record, necessary for the consideration of the points relied upon.

PHILIP B. PERLMAN,
Solicitor General.

December 20, 1951.

57 Supreme Court of the United States, October Term, 1951

No. 443

[Title omitted]

ORDER—January 2, 1952

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

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